1953. File No. Misc Suits Bij. 53

K (Original)

Legal DEPARTMENT

E BRANCH

Subject:— Miscellaneous suit— matters from Bijapur District—

138

Misc Suit Bijapur/53

File No.

Std. Scott. Slip 24-B

267-E

URGENT:

No. 723

Office of the
Government Pleader, High Court,
Bombay, 24th January 1953.

From

Shri H.M.Choksi,B.A.(Hons.)LL.B.,
Government Pleader, High Court,.

To

The Collector of Bijapur,
At : B I J A P U R.

Subject:- Civil Revision Application No.1510/52 in
Civil Suit No.432/42.
Mahabubi @ Chotibi father Abdul Gani Kazi.
-VS- The State of Bombay No.2 & Anr.

Sir,

In connection with the above subject, I have the honour to forward herewith a copy of the above application*with a request to send me your necessary instructions along with necessary case -- papers in the above matter at an early date. The may be treated as very urgent.

and notice

Yours faithfully,

Sd/- V. S. Desai.

For Government Pleader, High Court.

No.724
Bombay, 24-1-1953.

Copy with a copy of Civil Revision Application No.1510 of 1952 togetherwith a copy of notice forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for information and necessary action.

K No 55

V. J. Desai

For Government Pleader, High Court.

Submitted
Sanction may be accorded to the defence of Civil Revision Application No 1510/52

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 2315
Sub No. 29/1/53
E

3/2
Sol (1

3 -3-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

BOMBAY.

CIVIL REVISION APPLICATION NO.1510 OF 1952.

1. Mahabubi alias Chotibi father Abdul Gani Kazi, being weak minded and - mentally weak, by ~~thei~~ her next friend and guardian mother Mahamadabi kom Abdul Gani Kazi of Bijapur. ... ...) Petitioner (Orig.Plff.)

Versus.

1. The Collector, District Bijapur.
2. The State of Bombay. ... ...) Opponents.

Claim Rs. 475/-

The Humble Petition of the Petitioner abovenamed,

Most Respectfully Showeth:-

1. That the petitioner had filed a suit in " Forma Pauperis ", being No. 432 of 1942 in the Court of the Civil Judge (S.D.) at Bijapur, and the same was dismissed; the Lower Court has ordered the Government to recover the deficit court fee from plaintiff's guardian.

2. That the Petitioner has filed First Appeal No.194/1952 and the same is pending.

3. For the recovery of the deficit court fees the Mamlatdar has attached the land S. No. 98 belonging to the petitioner.

4. The Petitioner, therefore, applied on 5-9-1952 to the Civil Judge (S.D.) at Bijapur, requesting the Court to stay the Execution proceeding instituted by the Mamlatdar pending the appeal in this Hon'ble Court.

5. The lower Court rejected the application on the ground that it had no jurisdiction to interfere with the action taken by the Collector, under the Bombay Land Revenue Code.

-: B :-

6. Being aggrieved, the Petitioner begs to apply in Revision and prays that the order dated 17-9-1952 - passed by the Civil Judge, (S.D.), Bijapur, be set aside and such other order be passed, as may be necessary on the following among other grounds:-

(a) The lower Court has failed to exercise the jurisdiction vested in it, by rejecting the Stay application of the petitioner.

(b) The lower court has failed to consider the provisions of O.33,R.13, under which the - Government becomes a party under sec. 47.

(c) Either under o.41, r.6 or under sec. 151, C.P.Code, the Lower Court had jurisdiction to stay the proceedings before the Collector.

(d) This Hon'ble Court should, in the end of justice, stay further proceedings before, the Collector by directing that the sale of S. No. 98 be not held, pending the disposal of First Appeal No.194 of 1952.

(e) The Petitioner will suffer irreparable loss if the land is sold to recover the amount due to the Government..

(f) The Petitioner is weak-minded and mentally weak and her guardian is her mother, who is the appellant.

(g) The Petitioner, therefore, prays that proceedings under the Land Revenue Code for the recovery of the amount due to the Govt.as ordered by the Civil Judge (S.D.), in his decree dated 28-9-49 i O.S.No.432/42 be stayed, pending the disposal of the present revision application.

And for this act of kindness the Petitioner shall, as in duty bound, ever pray.

Bombay, Sd/- G. R. Madbhavi.

Dated: 3-11-1952. dvocate for the Petitioner.

mvg/23.1.53.

Sd/- A. M. Jahagirdar.

The applicant to state if any Darkhast is filed in this Court to execute the decree and if the acts complained of in this application are done in execution proceeding in the Darkhast.

8-9-1952. Sd/- M. M. Nadkarni.
Civil Judge, Sr. Dn.

In reply to the order dated 8-9-1952, I beg to submit that the Collector has not filed any Darkhast in this case. The act complained does not arise in the execution of the Darkhast.

But the Collector is proceeding probably under the land Revenue Code. Even then this Court has power to stay the proceedings. All questions arising with regard to the recovery of cost by the Government in Pauper proceedings fal under the provisions of Order 33 Rule 13. It is provided that such questions should be treated as falling under Sec. 47 of the C.P.Code.

Even if there is no specific provisions covering the present point at issue, the Court has ample powers to stay such actions and proceedings under Sec.151 of the C.P.Code in the interest of justice and equity.

It is true that the Collector has both the remedies open. He can recover the costs of the Darkhast or as an arrear of Land Revenue. But when the Court can pass orders for stay in the former case, it can also pass such orders in the latter case, especially under the provisions of the Sec. 151 C.P.Code.

1949-1952. Sd/-A.M.Jahagirdar.

Bijapur. Pleader for applicant.

The Judgment-debtor's learned pleader says that Government has filed no Darkhast in this Court to execute the decree. Government does not seek sale of Judgment-debtor -'s immovable property in execution under Order XXI of the C.P.Code. Order XLI rule 6 has no application in this case. It appears that the Collector is taking action under the Bombay Land Revenue Code. This Court has no jurisdiction to interfere with the action taken by the Collector under the Bombay Land Revenue Code.

Application rejected. Costs on applicant.

17-9-1952.

Sd/- M. M. Nadkarni.

Civil Judge, Sr.Dn.

S E A L.

True Copy.

Sd/-

Clerk of the Court. 19/9/52.

MVG/24.2.

Civil Suit No. 432 of 1942.

In the Court of the Civil Judge, Sr. Dn.,

Bijapur.

1. Mahabudi alias Chotibi..... Applicant.

The applicant named above begs to submit as follows:-

1. The applicant being a J.D., of the Collector to pay pauper costs in the abovementioned suit, has applied to the Collector for stay of proceedings taken by the Mamlatdar of Bijapur for recovery of pauper costs by forfeiture of the land mentioned in the application No. L.P. D. 5/50, dated 18-8-1952. The collector by his No. L.P.D.31/49, dated 17-9-52, returned the application with an endorsement that the recovery can be stayed under O.41. rule 6 of the C.P.C. on the order of the Civil Court - which passed the decree in the above suit; and with a further direction that the said request may be made to the Civil Court concerned.

Therefore, the applicant is herewith producing the application presented to the Collector with the endorsement referred to above and prays that the Court be pleased to stay the proceedings started by the Mamlatdar of Bijapur taluka under his No. L.P.D.5/50, dated - 18-8-1952, and a yadi may be sent to that effect to the Mamlatdar of Bijapur Taluka.

Bijapur.

17/9/1952. Sd/- A.M.Jahagirdar,
Pleader.

..

Order 41 rule 6(1) C.P.Code says that where an order is made for execution of a decree, security can be taken from the Decree-holder for resitution of the property which may be taken in execution. In this case, the Court has made no order for execution of the decree. The Judgment - debtor does not pray for taking security from Decree-holder. Sub-rule (1) of Order 41 rule 6 does not therefore apply.

Sub-rule (2) of the said rule says that where an order is made for sale of immovable property in execution the Court which made the order can stay the sale. In this case, this Court has made no order for sale in execution of the decree. Hence, sub-rule (2) is not applicable.

Application is not tenable. It is rejected. Costs on applicant.

17-9-1952.

Sd/- M. M. Nadkarni.
Civil Judge, Sr. Dn.

...

SEAL.

True copy.
Sd/-
Clerk of the Court.
19/9/52.

...

mvg/24.1.

1515

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CIVIL REVISION APPLICATION NO.1510 OF 1952 IN

SUIT NO. 432 ~~&~~ OF 1952 OF THE CIVIL JUDGE, S.D. COURT AT BIJAPUR.

Mahabubi @ Chotibi father Abdul Gani Kazi being Weak minded and mentally weak by her next friend and guardian mother Mohamadabi kom Abdul Gani Kazi. ... ... Petitioner.
(Ori.plff.)

Versus.

1. The Collector, District Bijapur.

2. The State of Bombay. ... . Opponents.

Claim Rs.475/- for both purposes.

No.120 of 1953.

Bombay 21st January 1953.

From
The Deputy Registrar,
High Court, Appellate Side, Bombay.

To

*The Secretary to the
Government of Bombay, Legal Department.

Sir,

The Applicant abovenamed having presented a Civil Revision Application for the revision of the order dated 17th day of September 1952 passed by the Civil Judge,S.D. of Bijapur in Suit No.432 of 1952 and further praying for stay of the decree in said suit, and the same having been numbered in this Court, as above and this Court having on 5th day of December 1952, ordered notice to issue, I have the honour to inform you that the hearing of the said application will take place on the 23rd day of February 1953, or ~~on~~ on any subsequent day which to this Court may seem convenient; and that if no appearance is made on you behalf either in person or by an advocate of this Court or agent duly authorized and instructed, to show cause as aforesaid it will be heard and determined in your absence.

Yours faithfully,

Sd/- X X X

for Deputy Registrar.

* To be served on the Govt.Pleader, High Court.

No. 2542/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 7th February 1953.

To

The Government Pleader,
High Court, Bombay.

Subject:- Civil Revision Application No. 1510/52 in civil suit No. 432/42.
Mahabubi @ Chotibi father Abdul Gani Kazi.
-Vs- The State of Bombay No. 2 and Anr.

Sir,

With reference to your endorsement No. 724 dated the 24th January 1953, I have the honour to state that sanction is accorded for the defence of Civil Revision Application No. 1510/52 as requested by you.

Yours faithfully,

for Remembrancer of Legal Affairs.

Copy forwarded with compliments to the Collector of Bijapur.
Copy to the District Government Pleader, Bijapur.

EM.
6.2.

Submitted after issue

File in Miss Smith Bijapur/53

Thu
9/2

Superb NB
9/2/53

Miss Smith Bij/53
11/2

No. 275 of 1953. 19 19
Date:- 13-2-53

To

The Collector of Bijapur,

Subject:- Bijapur Civil Suit Nos. 373 to 387 of 1952.

Sir,

I have the honour to inform you that the following suits are fixed on the following dates for putting in Written statement. I therefore request you to move Government to sanction the defence of the suits early.

Bijapur C.S.No.	Date for W.S.
373/1952.	
374/1952.	
375/1952.	
376/1952.	10-4-1953.
377/1952.	
378/1952.	
379/1952.	
380/1952.	
381/1952.	
382/1952.	
383/1952.	13-4-1953.
384/1952.	
385/1952.	
386/1952.	
387/1952	

THE SECRETARIAT LEGAL DEPARTMENT File No. 4337 20/2/53 E

Yours faithfully

Sd.A.C.Aggadi.

District Government Pleader, Bijapur.

LEGAL DEPARTMENT

19 FEB 1953

No. 276 of 1953.
Date:- 13-2-53

Copy forwarded with respects to the Remembrancer of Legal Affairs, Bombay No.1, for information.

Abusad

District Government Pleader, Bijapur.

Settled for information
File in Misc Suits
Bijapur/53

c. 20/2

S.S. 20/2

misc suits Bij/53

23/2

21 21

No. 453 of 1953.
Date 20-3-1953.

To

The Collector of Bijapur.

Subject:- Bijapur C.S.No.20/1953.
1.Laxman Ramchandra Kulkarni. plff.
Vs.
1.The Province of Bombay. deft.

X No pps.

Sir,

The above suit was fixed today for putting in Written-statement.

2. The plaintiff applied on 8-3-1953 to dispose of the suit by an application as per copy ~~of~~ herewith attached.

I stated to court that I will put in my say about it to-day.

I sent copy of it to you for favour of instructions and you sent me a reply yesterday stating that the sale proceedings are still pending confirmation with the Prant Officer and that I should take one month's time by which time necessary instructions would be sent to me.

3. This day I ~~got~~ drafted an application for time.

The Civil Court dismissed the suit with costs. An uncertified copy of the order below the plaint is sent herewith to you.

Yours faithfully

Sd.A.G.Angadi.

District Govt.Pleader,Bijapur.

THE SECRETARIAT GOVERNMENT
LEGAL DEPARTMENT
File No. 7340
Dated 25/3/53

LEGAL DEPARTMENT
24 MAR 1953

No. 453 of 1953.
Date: 20-3-1953.

Copy respectfully forwarded to the Remembrancer of Legal Affairs Bombay with an uncertified copy of Exh.11, and of order below the Plaint dismissing the suit with costs.

Angadi

District Govt.Pleader,Bijapur.

Submitted

Pl. see D.G.P's letter overleaf

C.S No 20/53 is decided in favour of Govt

File in Misc. Suits Bijapur/53

Vkm
25/3

Sol (M) R 2573

Civil Suit No. 20 of 1953. 23 23

In theCourt of the Civil Judge,Senior Division,
At Bijapur.

1.Laxman Ramachandra Kulkarni
of Kambagi,Taluka Bijapur. plff.

Vs.

1.The Province of Bombay(The
State of Bombay). deft.

Below Plaint Exhibit No.1.

Order.

Exhibit No.11 is filed.

Suit is dimissed with costs.(deft's costs 1/4th)

20-3-1953. Sd.M.H.Kazi.
Civil Judge,Sr.Dn.,Bijapur.

Exhibit No.11. Civil Suit No.20 of 1953.

In the Court of theCivil Judge,Sr.Dn.,Bijapur.

1. Laxman Ramchandra Kulkarni. plff.

Vs.

1. The State of Bombay. deft.

Herein the plaintiff begs to submit his pursis as under:-

The plaintiff learns that the defendant has recovered the amount, alleged to have been misappropriated by Kazi, from another surety and has passed an order that the said proceedings against the plaintiff be dropped. Hence the cause of action for t is suit no longer survives. Plaintiff, therefore, does not wish to prosecute this suit further reserving his right to file another suit if a fresh cause of action arises.The suit may therefore be disposed of without any order as to costs.

8.3.1953. Sd.L.R.Kulkarni.
Plaintiff.

Filed in Court on 9-3-1953.

Sd/-A.B.Kankanwadi.
Pleader for plff.

I will put in my say on 20-3-1953.

9 20-3-1953. Sd. A.C.Angadi.
Dist.Govt.Pleader,Bijapur

Mis Amis Bi 153

No. 558 of 1953.
Date:- 13-4-53

To

The Collector of Bijapur.

Subject:-Bijapur C.S.No.20/1953.
1.Laxman Ramchandra Kulkarni. plff
Vs.
1. The Province of Bombay deft.
(The State of Bombay).

Sir,

I have the honour to forward herewith the extract of the final order in the above suit together with bill of costs.

2. The plaintiff is to pay Rs.15-0-0 to the Government. The plaintiff may be asked to pay the amount. The amount is not to be recovered as arrears of Land Revenue. If the plaintiff fails to pay the amount certified copies of Record of Rights of his property together with instructions to file a Darkhast may be sent to me.

LEGAL DEPARTMENT
15 APR 1953

Yours faithfully

Dist.Govt.Pleader, Bijapur.

No. 559 of 1953.
Date:- 13-4-53

Copy forwarded with respects to the Remembrancer of Legal Affairs, Bombay, along with an extract of the final order in C.S.No. 20/1953 together with the Bill of costs.

Dist.Govt.Pleader, Bijapur.

9416
16/4/53

Fila vii. Miss Suits Bijapur 53

Notes on reverse

Exhibit No.1. Civil Suit No. 20 of 1953. 24/29

In the Court of the Civil Judge, Senior Division, At Bijapur.

1. Laxman Ramachandra Kulkarni
Brahmin, age 30, Agriculture
of Kambagi Taluka Bijapur. plaintiff.

Vs.

1. The Province of Bombay
(The State of Bomba). Defendant.

Claim Rs.6-4-0.
V.P. Rs.10/-.

X X X

Order.

Exhibit No.11 filed. Suit is dismissed with costs(defendant's costs 1/4th).

20-3-1953. Sd.M.H.Kazi.
Civil Judge, Sr.Dn., Bijapur.

ಕಾಚೆಯ ಮೆಚ್ಚಿ.

ಬಾಬತ್ತು.

(೧) ಅರಿಲ ಅಧಿಕಾರಿಗಳ್ಳಿಂದು. ೬-೪-೦
(೨) ಮುಖಲ್ಲೇಂಕಾಚೆಂಗ. ೦-೧೦-೦
(೩) ದಾಖಲಾದ ಕಿರಾಣ ಸಿಗ ಸ್ಟಂಪ್ ೧-೪-೦
(೪) ಪ್ಲೀಡರ ಫೀಲ್ ೧೫-೦-೦
(೫) ಇತರ ಖರ್ಚಿನಬಾಬತ್ತಿನ ೧೩-೩-೦
ಅಂತು. ೩೬-೧೪-೦

ಕೊಟ್ಟವರು ಯಾರು ಮತ್ತು ಯಾವ ಬಾಬತ್ತಿಗೆ

ವಾದಿಯಾದಾವ ಪಿರ್ಯಾದಿ ಪರವಾಗಿ ೧-೪-೦ ೧೪-೧೦-೦

ಪ್ರತಿವಾದಿಯಾದಾವ ಪಿರ್ಯಾದಿ ಪರವಾಗಿ ಅಂತು ೧೫-೧೦-೦
೦-೧೦-೦
೧೫-೦-೦

ಈ ಖರ್ಚಿನ ಮೆಚ್ಚಿ ಪತ್ರ ೨೦-೩-೧೯೫೩ ರಲ್ಲಿ ನಮ್ಮ ಸಮಕ್ಷಮ ತೋರಿಬಂದ ಪ್ರಕಾರ ಮೇಲಿನಂತೆ ಮಂಜೂರು ಮಾಡಿರುತ್ತೆ.

Sd/- A.S.Mulla
Advt.

Sd/- M.H.Kazi.
ಸಿವಿಲ್ ಜಡ್ಜ್, ಸೀನಿಯರ್.

ಬಾಬತ್ತು ವಕೀಲರು.

Sd/- D.S.Inamdar B.A.
ಪ್ಲೀಡರ್ ವಕೀಲರು

2+3D

R.I.No. 10560 dt/30.4.53

Submitted

Pl see this office endorsement at P- 15 ante.

Pl. see Collector's letter at P- 19 ante

for orders.

Mew
8/5

Sol (M)

The claimant has already been dealt with by the Collector in accordance with the powers delegated. No further action is necessary. The papers may be filed. It does not seem necessary to give a copy to the ~~Government~~ Sahayaka letter dated 8-1-1953

8/5/53

RT No 870
dt/1.5.53
Pgs 1-25
forwarded to
R.D with
the reply

Ille in Mesc. Seidl Beigaben/53.

Ilw
6/5

Symbol

3333

Legal Department.

The claim has already been dealt with by the Collector of Bijapur in accordance with the opinion of the Remembrancer of Legal Affairs. No further action seems to be necessary. The papers may be filed. It does not seem necessary to give a reply to the letter dated the 8th January 1953.

Solicitor to Government
(Mofussil Litigation).

U.R.to R.D.,No. 11707/E, dated the 25th May 1953.

MRP.
21/5.

Issued 3333

Submitted for orders

21/5

Dol (N)

39

File in Misc. Subs Bijapur/53

26/5

Supdt LB
26.5.53

Mis Subs 71
27/5/53

RI No Co 623 dt-20/6/53

35

Solicitor (M.L) Legal Department.

This is a reference from the Civil Supplies Deptt. seeking the advice of the R.L.A. regarding the feasibility of filing a Civil Suit against the ex. Godown Keeper named Shri S.N. Talikot who absconded after misappropriating a sum of Rs.10,334/11/6.

The facts of the case appear to be these.

Shri S.N. Talikot was appointed to officiate as Godown Keeper at the village Talikot, Taluka Muddebihal, Distt, Bijapur. He joined his post at Talikot on the 20th July 1948 and he worked till 28-1-1953, and then it was found that he had absconded. The Godown ~~Keeper~~ was then inspected and the accounts were checked by the Accounts Supervisor. It is found that Shri Talikot had caused ~~the~~ loss to the Government to the extent of Rs.10334/11/6 either by falsification of accounts or by misappropriation of food grains or other articles. The figure of Rs.10,334/11/6 was only tentative. The final loss is still to be determined.

Shri Talikot had given security for Rs.2000/-. The amount of Rs.2000/- was therefore ~~required~~ recovered from his surety. The balance of Rs.8334/11/6 is proposed to be recovered from Shri Talikot by filing a suit against him.

The Collector reported however that Shri Talikot was absconding and he had no property of any sort in the Bombay Province. It was reported that he owned about 11½ acres of land ~~xx~~ in the village Gundalgeri in Gulbarga District in the Hyderabad Province. The value of the land is estimated to be Rs.1100/- and the tenure of the land is said to be "Inam Khalsa". The Collector proposed that xx a suit should be filed so that Government may recover atleast a small portion out of the total amount due from the defaulter. The Civil Supplies Deptt. has however pointed out that it ~~xxxx~~ would be hardly worthwhile

filing a Civil Suit against the defaulter. The Civil Supplies Deptt. want to know if that view is correct.

A/ It is clear that the amount due from the defaulter is Rs.8334/11/6. As against that liability, the property owned by the defaulter is said to be worth Rs.1100/- at the most. The land is held by the defaulter under the "Inam Khalsa" tenure. It is not known whether according to Hyderabad law such land is alienable. The cost of filing the suit against the defaulter for recovering Rs.8334/11/6 will be about Rs.1100/-

Under the circumstances, it will be hardly worthwhile filing a Civil Suit against the defaulter for recovering Rs.8334/11/6. The better course will be to wait for some time If the defaulter returns and starts a new business or acquire new property, Government may proceed against him. There will be no difficulty as regards limitation as the Govt. can file a suit within 60 years.

9/7/53

Addl Secy.

10/7/53

A/9/7

Legal Department.

37

It is clear that the amount due from the defaulter is Rs.8334-11-6. As against that liability, the property owned by the defaulter is said to be worth Rs.1100/- at the most. The land is held by the defaulter under the "Inam Khalsa" tenure. It is not known whether according to Hyderabad law such land is alienable. The cost of filing the suit against the defaulter for recovering Rs.8334/11/6 will be about Rs.1100/-.

Under the circumstances, it will be hardly worthwhile filing a Civil Suit against the defaulter for recovering Rs.8334-11-6.

O.C.

Additional Secretary to Government.

× Will file No. SUPADM.SR-85

× U.R.to C.S.D.,No. 14108/E, dated the 13th July 1953.

Issued 16/7/53

MRP. 10/7.

Subd. for Signe

16/7 Sol(M) Secy 11/7

ADM: Secy

File in Mus. Smith Bijapur/53

KB
14.7.53

Solr.(M.)

This is a reference from the Collector and Court of Wards, Bijapur, and the point fo consideration is whether it is necessary for the Collector and Court of Wards to put in an appearance in the High Court First Appeals No 207 and 300 of 1953, in which the Court of Wards is impleaded as a respondent. The fact leading to the two appeals are these:

The superintendence in respect of the property of Shri Sayad Ashadulla Husseini Wd. Sayad Peer Pachha Hussein Jahagirdar of Darga was assumed by the Collector and Court of Wards, Bijapur under section 9 of the Bombay Court of Wards Act on the 15th November 1921 The estate consisted of Wakf property attache to a Durgah and private property. There were five wards of the estate and they were provid with maintenance out of the income of the property. The Court of Wards was in manageme for about 30 years. It was decided in Januar 1951 that the superintendence of the property by the Court of Wards should be withdrawn. A notification under section 42 of the Act was accordingly published in the Bombay Governmen Gazette on 4-2-1951. However, at the time of handing over possession to the wards it was found that there were serious disputes amo)g them as regards their shares in the various properties and also as regards the right to officiate as "Sajjadanashin" of the Dargah. Th dispute was of a nature requiring adjudicatio of a Civil Court. The Collector and Court of Wards therefore proceeded under section 36 of the Court of Wards Act and stated the poin in dispute to the Civil Court for its opinion

under..

under section 90 Civil Procedure Code read with section 36 of the Court of Wards Act. The Court treated this reference as a special civil suit. All the wards interested in the dispute were made parties to this suit. The Civil Court delivered its opinion on the points of dispute by judgment dated the 31st of December 1952. It was held that the right to hold the office of Sajjadanashin vested in defendant No.1 Sayad Imam. The Wakf property attached to the Dargah was also to be managed by defendant No.1 and to be treated as impartible property. Certain properties were declared to be Wakf properties and the remaining properties were declared to be private and partible properties. But the shares of the 5 wards in these properties were not declared and general partition was not ordered as there were other persons who had also shares in the property according to Mahomeddan Law and those other persons were not impleaded as parties in this suit.

The Court of Wards has accordingly handed over the Wakf property to defendant No.1 who is also now officiating as Sajjadanashin and the private property to the five wards. It seems that defendants Nos. 2 and 3 were not satisfied with the decision of the Civil Court. Defendant No. 2 filed First Appeal No.207 and defendant No.3 filed First Appeal No.300 of 1953 in the High Court against the decision of the Civil Judge, Senior Division, Bijapur. The Court of Wards has been added as a respondent in both these appeals. The question now is whether the Court of Wards should put in an appearance in the two appeals through the Government Pleader, High Court. It seems that the Government Pleader, High Court, has already been asked by the

Collector...

Collector to appear in the first appeal No. 207. But that appearance is subject to the final orders of the Government. The Govt. Pleader, Bombay has reported to the Collector and Court of Wards that the cost of defending the two appeals would be about Rs.3200/-. The Collector of Bijapur has expressed the view that with the withdrawal of the superintendenc of the Dargah estate the Court of Wards has no further interest in the litigation and it is not necessary for the Court of Wards to defend the appeals. The dispute now relates only to the relative shares of the five wards. The bulk of the property has been already handed over to the five wards subject to the final decision of the Civil Court.

As the superintendence of the estate has been withdrawn and the bulk of the property handed over to the five wards, the Court of Wards has clearly no further interest in that property. The dispute which remains relates to the respective shares of the different wards and the Court of Wards will have no interest in that dispute. It does not, therefore, seem to be necessary for the Court of Wards to defend the two appeals. The cost of defending these two appeals would be about Rs.3200/- as stated by the Govt. Pleader. These costs will have to come out of the estate in the ordinary course. This would be clearly an unnecessary burden on that estate. The persons interested in the dispute are now in a position to take proper care of their interest. The Collector and Court of Wards may be therefore advised that it is not necessary for the Court of Wards to put in an appearance.

appearance in these two appeals pending in the High Court.

SKle
14/1.

Secy. Ld. 14/10

43 U

Legal Department.

As the superintendence of the estate has been withdrawn and the bulk of the property handed over to the five wards, the Court of Wards has clearly no further interest in that property. The dispute which remains relates to the respective shares of the different wards and the Court of Wards will have no interest in that dispute. It does not, therefore, seem to be necessary for the Court of Wards to defend the two appeals. The cost of defending these two appeals would be about Rs. 3200/- as stated by the Government Pleader. These costs will have to come out of the estate in the ordinary course. This would be clearly an unnecessary burden on that estate. The persons interested in the dispute are now in a position to take proper care of their interest. The Collector and Court of Wards may be therefore advised that it is not necessary for the Court of Wards to put in an appearance in the two appeals pending in the High Court.

O.C. 15/10

Secretary to Government.

with plys.

U.R. to R.D. No. 26985/B dated the 16th October 1953.

hsp/15/10

Submitted for Sanction
VK
15/10
Sol(M) Secy
15-10-53

Secy.

Submitted after Issue
File in Misc Subs Bicycles/53

Thu
17/10

Supplied KB 17/10/53

Misc Subs Bic/53

20-13

2545

No. [illegible]
Bijapur, 6-7-19

The Secretary to Government,

L. D. Bombay.

Subject:- Supply of copies of Govt. Resolution:

The Govt. Resolutions as shown in the accompanying List are not traceable in Govt. Resolution files maintained in the Collector's Office Record Room. It is, therefore, requested that a copy of each of the Govt. Resolution mentioned in the list may kindly be supplied to this office for record.

L D
- 9. JUL 1953
SECRETARIAT
LEGAL DEPARTMENT

for Collector, Bijapur.

1669-4
5-10-19

G.R.L.D.

41 47

S.No	G.R.L.D. No.	Date.
1	633	2-12-21.
2	633	10-9-21.

Huzur Deputy Collector,
Bijapur.

Sabtd 49 49 5

This is a reference from the Collr. Bijapur requesting this deptt. to supply the copies of the S.R.L.D. No. 633 of 2-12-21 and No. 633 of 17-9-21

The outward Register of the year 1921 was gone through. There is no S.R. bearing No. 633 of the 2nd december 1921. There is also no S.R. bearing No. 633, of the 17th Sept. 1921.

Perhaps the Collr. of Bijapur may be requested to State the exact numbers of the S.Rs. & the dates on which they were issued. He may also be requested to give the subject-matter of the S.Rs. in order to enable this office to find out the S.Rs.

31/7

Sabtd NB 31/7

Sd(M) 7/8

No. 17190/12
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), 17th August 1953.

To

The Collector of Bijapur.

Subject:- Supply of copies of Govt. Resolutions.

Sir,

With reference to your letter No. A.D.M.R.dt/6-7-1953 on the above subject, I have the honour to state that the numbers of the Government Resolutions quoted by you do not appear to be correct. You are, therefore, requested to state the exact numbers of the Government Resolutions and the dates on which they were issued. You are further requested to give the subject matter of the Govt. Resolutions in order to enable this office to find out these Government Resolutions.

Yours faithfully,

for Remembrancer of Legal Affairs.

HSP/17/8

No.ADM.- R S S 53-
Bijapur, 8-10-53

To

The Rememberence of
Legal Department,
Bombay.

Sub :- Supply of copies of G.Rs.

Ref :- Your No. 17196/E dated 17/19-8-53.

Subject matter of G.Rs 633 of 17-9-21 and 2-12-21 is not available though a careful and thorough search was made in this office files.

For Collector, Bijapur.

L.S.
10 OCT 1953

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
24235
12/10/53

10

Subject.

Please see the Coll's letter overleaf. In the absence of correct Nos. & dates and also the subject matter of the Fort. Resolutions cited, it is not possible for this office to trace out the F.Rs in question. The Coll. may be informed that in the absence of the details of the F.Rs. the same cannot be supplied

The letter is put up for signature

16/10 The Collector was requested by our letter (at p.7) ~~Supplt~~ to state the correct Nos. and also to state the subject-matter of the Resolutions. The ~~Submitted~~ Collector now states that he cannot state the subject-matter. As already stated in the D.O at p.5 ante that the F.Rs cannot be traced in the absence of the subject matter the Collector may be informed as per reply put up on the next page (p.11)

16.10.53 Sd/(M) 16-10

Plain 19.10

No. 21244/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 20th October 1953.

To

The Collector of Bijapur.

Subject:- Supply of copies of Government Resolutions

Sir,

With reference to your letter No. ADM-R dated the 8th October 1953, on the above subject, I have the honour to inform you that it is not possible for this office to supply the copies of Government Resolutions as the Nos. & dates of the same do not seem to be correct and the subject matter of the Government Resolutions is also not known.

Yours faithfully,

for Remembrancer of Legal Affairs.

Land Rev 20/X.
BM.
19.10.

Sabhr. for sign. as amended by Sol (Mis)
19/10
Sol (Mis)

Salva. after inv

File in Misc Suits Bijapur /53

/10/53

Bijapur NB

1/10/53

Misc Suits Bij /53

22-10

57 · 57

Correspondence.

DOCKET SHEET.

Subject :- Smt Byapur — The State of Bombay vs Shri K. M. Gilli

File No. 22271

Legal Dept.

E Branch

References :-

Date	To whom sent	Notes and instructions.
16/9/53	Shri Bore →	

59 59

DOCKET SHEET.

F.A.& Addl. Secy Reference.

Subject:- Recovery of Govt. dues from Shri. K.M. Giri of Belgaum ex-clearing & despatching agent, Deccan States.

File No. G— 1111

Legal DEPT.

G. BRANCH.

Reference :-

Date	To whom sent	Notes and instructions.
14-9-53		This may also be dealt with in E. Br. along with the linked case Sol 1/9 ~~DS (O)~~ Sol (m.l.)

61 61

Correspondence.

DOCKET SHEET.

Subject: Suits Bijapur

File No. 22272

The State of Bombay Vs Shri K. M. Jain

Legal Dept.

E Branch

References :-

Date	To whom sent	Notes and instructions.
16/9/53	Shri Bose	

63 63

DOCKET SHEET.

C.S.D/Accs. Reference.

Subject:- Recovery of Govt. dues from Shri. K.M. Giri of Belgaum ex-clearing agent, Deccan States

File No. G-1120

DEPT.

BRANCH.

Reference :- G-1111 14-9-53

Date	To whom sent	Notes and instructions.
15/9		This is for E Br.
		15/9
	Q	E Br

65 65

DOCKET SHEET.

Suits Poona

..... Reference.

Subject:-
The State of Bombay
Vs
Shri K. M. Jivraj

File No. 20574

Legal DEPT.

E BRANCH

Reference :-

Date	To whom sent	Notes and instructions.
22/8/53	Shri Parwani	~~Secretary~~ This is an institution Suit & may please be marked to some Member Sh 25/8 Shri Bijlani may Sol (M) examine the papers first R 25/8

67 - 69

C-SD

DOCKET SHEET.

F. A.'s Office Sub.

.... Reference.

Subject:- Filing of suit against Shri K. M. Firm at Kolhapur

File No. 20534

Legal DEPT.

E BRANCH

Reference :-

Date	To whom sent	Notes and instructions.
21/8/53	Shri Parwani	Submitted Please see F.A's Office Note at Pp. 133–134 for orders Vkr 25/8 Institution of suit may be approved by Shri Bose on behalf of the Government of India Ans 25/8

C/O

C.O. R.9. NOS.
22271 / 16-9-53
9-1111 / 14-9-53 } Bijapur case.

20574 / 22-8-53 Poona case.

69 69

Office of the R.L.A.

22272 / 16-9-53
9-1120 / 15-9-53 } Bijapur case.

20534 / 22-8-53 Kolhapur case.

The Financial Adviser's Office has stated in the Jamkhandi case ~~papers~~ that filing of the suit against Shri K.M.Giri may be deferred till the Belgaum suit already filed is decided finally.

The Belgaum suit is not yet decided. The District Government Pleader, Belgaum, has stated in his letter No.788, dated the 22nd October 1953, addressed to the Assistant Director of Civil Supplies (Accounts), Bombay - copy endorsed to this office, that the Belgaum suit is well-nigh ready for issues, and the hearing will take place early. The institution of the Jamkhandi suit and other suits will be postponed till the Belgaum suit is decided. In the meantime, the Financial Adviser's Office is requested to collect the necessary material in each of the four cases to be filed against Shri K.M.Giri in respect of the transactions relating to the Jamkhandi, Kolhapur, Phaltan and Mudhol States. The Collectors concerned should be requested to submit <u>full and detailed report</u> as required under rule 108 of the Law Officers Rules. The papers of the four cases received from the Financial Adviser's Office are returned herewith.

OC. Sd

For Remembrancer of Legal Affairs.

U.R.to R.A's Office,No. 21886 dated the 29/10 Oct.1953.

MRP.
28/10.

Issued 29/X

Subbd. for Sign.
28/10/53

Sol(M)

To

File in Misc. Smith. Bijapur/53

NB
30/10/53

misc Smith Bij/53
31-10

G.C.P.—(J) J 157—12,000—9-52
G O., L.D., No. 1193 dated 7-12-15

[Govt. PI. H.C Bom.—Spl. Form No. 2 e

No. 939

From

2 - FEB 1954

THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY;

THE SECRETARY TO GOVERNMENT, LEGAL DEPARTMENT, BOMBAY;

~~THE PUBLIC PROSECUTOR, Bombay,~~

To

~~THE DISTRICT MAGISTRATE~~
THE COLLECTOR OF Bijapur.

3048

Bombay.....1.2.1954.....*195* 3/2/54

SIR,

Referring to.....your office letter.....No...2542/E LPD-31/1949.....
dated..7th February 53 10.2.1953.....195 I have the honour to inform you that the Case noted in the margin was heard by the High Court on

Civil Revision Application No. 1510/52 in =suit No. 432 of 1942.
Mahabubi @ Chhtibi father Abdul Gani Kazi
V/S
The State of Bombay No. 2 and anr.

29.1.1954. when the following Order was passed:—

" Rule discharged no order as to costs."

Yours faithfully,

V. Gambhir

Government Pleader, High Court.

Subm. Illes f. wiss. adler

file in Miscl. Suits Bj | 53

K
S/2

-SoC(M) R G/2

Misc. Suits Bj | 53

9/2/54

G.C.P.—(J) J 160—3000—10-52
G.O , L.D., No. 1193 dated 7-12-15

[Spl.—Govt. Pl. H. C. Bom. 8.6

No. 2234

From

THE GOVERNMENT PLEADER, HIGH COURT,
BOMBAY;

To

The Secretary to Government, Legal Department, Bombay
~~The Collector of~~
~~The District Magistrate of~~

2542 E 7-2-54 Bombay 9 8-3- 1954

Sir,

With reference to this office letter No. 939, dated 1-2-1954,

Civil Revision Application

~~Appeal~~ / Application No. 1510 of 1952

Certified copies of High Court ~~Judgment~~ order and Decree.

I have the honour to ~~forward~~ / ~~return~~ herewith papers in the case as noted in the margin, and to request the favour of your acknowledging the receipt thereof.

L.D.
11 MAR 1954

THE SECRETARY
LEGAL DEPARTMENT
File No. 7118
Sub No. 11/3/54 C

Yours faithfully,

for V. J Desai

Government Pleader, High Court.

Submitted for reference

File in Mess. Suit B:J/53

MH

18/3

Sol(MH) 18/3

75-
75-

		Rs.as.ps.	
390.	Copying & Comparing charges.	0-12-0	Fols.2.
	Paper charges.	0-0-3	
	Total Rs..	0-12-3	

Annas Twelve and pies three only.

Superintendent,D.D.
22-2-1954.

Typed by Mr.D.R.Gokarn.20-2-54.
Examined by Mr.D.T.Patwardhan
Read by Mr.S.D.Paradkar

Copy applied for on 2.2.54
Copy ready on 23-2-54
Copy delivered on 4-3-54
Sent by P. — on
Assistant Superintendent.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the Case of :

Mahabubi alias Chotibi father Abdul Gani Kazi, being weak minded and mentally weak, by her next friend and guardian mother Mahamadabi kom Abdul Gani Kazi.(Original Plaintiff)...Applicant.

Versus.

1. The Collector,District Bijapur;2.The State of Bombay.(Original Opponents).....Opponents.

being Civil Revision Application No.1510 of 1952.

Mr.G.R.Madbhavi,Advocate for the Applicant.
Mr.V.S.Desai for The Govt.Pleader for the Opponents.

Coram:- Chagla,C.J.

The Court passes the following order in respect of the rule granted by it on the 5th day of December 1952 ~~passed~~ whereby the Opponents were required to show cause why the order dated 17-9-1952 passed by the Civil Judge, Senior Division, Bijapur in Special Civil Suit No.432 of 1942 should not be set aside.

"Revision application does not survive.Rule discharged. No order as to costs".

Dated this 29th day of January 1954.Sd/-V.R.Gadkari
Deputy Registrar.

True Copy

For Deputy Registrar
The 22nd day of February 1954.

771.

		Rs.as.ps.	
390.	Copying & Comparing charges.	1-8-0	Fols.4.
	Paper charges.	0-0-3	
	Total Rs...	1-8-3	

Rupee One, annas eight and pies three only.

Superintendent,D.D.
22-2-1954.

Typed by Mr.D.R.Gokarn.20-2-54.
Examined by Mr.D.T.Patwardhan
Read by Mr.S.D.Paradkar.

Copy applied for on 2-2-54
Copy ready on 23-2-54.
Copy delivered on 4-3-54
Sent by R. P. on
Assistant Superintendent.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the Case of :

Mahabubi alias Chotibi father Abdul Gani Kazi, being weak minded and mentally weak, by her next friend and guardian mother Mahamadabi kom Abdul Gani Kazi.

(Original Plaintiff).....Applicant.

Versus.

The Collector, District Bijapur; 2. The State of Bombay.

(Original Defendants).....Opponents.

being Civil Revision Application No. 1510 of 1952.

Mr. G. R. Madbhavi, Advocate for the Applicant.
Mr.V.S.Desai, for The Govt.Pleader for the Opponents.

Coram:- Chagla,C.J.

The Court passes the following order in respect of the rule granted by it on the 5th day of December 1952 whereby the Opponents were required to show cause why the order dated 17-9-1952, passed by the Civil Judge, Senior Division,Bijapur in Special Civil Suit No.432 of 1942 should not be set aside.

"Revision application does not survive. Rule discharged.

78

No order as to costs".

Dated this 29th day of January 1954. Sd/- V. R. Gadkari
13/2/54
Deputy Registrar.

Bill of costs in the High Court:

By the Applicant:	Rs.as.ps.
Stamps for Application.	5-0-0
Stamps for copies of decrees and judgments.	1-4-0
Stamps for Vakalatnama.	2-8-0
Bhatta for Process.	2-8-0
Sectioner's Fee.	7-7-0
Advocate's Fee.	45-0-0
Surcharge.	11-4-0
Stamp for affidavit.	0-5-0
Total Rs..	75-4-0

By the Opponents:	
Stamps for Vakalatnama.*G.P.appears.	0-0-0
Advocate's Fee.	45-0-0
Surcharge.	11-4-0
Total Rs..	56-4-0

(Seal) Sd/- V. R. Gadkari
Deputy Registrar.
The 29th day of January 1954.

True Copy

For Deputy Registrar
The 22nd day of February 1954.

Misc Suits Bijapur/53
with pps
19/3/54